



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: December 8, 2011

Agenda Item No. 7: Public Hearing: Consideration of an Order to Comply Issued by the SMGB to the Big Cut Mine (CA Mine ID #91-09-00XX), Joseph and Yvette Hardesty and Rick Churches (Operators), Joseph and Yvette Hardesty and Rick Churches (Agents), County of El Dorado, for Failure to Correct Violations Pursuant to the Surface Mining and Reclamation Act (Public Resources Code Section 2710 et seq.).

INTRODUCTION: The State Mining and Geology Board (SMGB) acts as the lead agency pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC) Section 2710 et seq.) for all surface mining operations in the County of El Dorado. On March 10, 2011, the SMGB moved to issue an Order Imposing Administrative Penalty in the amount of \$100,000.00 to the owners/operators of the subject site for failure to comply with previous violations and a subsequent Order to Comply relating to illegal surface mining operations. On April 27, 2011, the office of the SMGB was informed by California Department of Fish and Game (CDFG) staff that apparent surface mining operations at the above referenced property had resulted in an off-site discharge of sediment to Weber Creek. CDFG staff invited Will Arcand, Senior Engineering Geologist with the SMGB, to accompany them during a follow-up site inspection at the Big Cut Mine and adjacent property, which was conducted on April 29, 2011. Mr. Joe Hardesty was present on the Big Cut Mine property during the April 29, 2011 site inspection.

Ongoing and expanded surface mining operations were confirmed to be occurring at the Big Cut Mine site based on observations made during the April 29, 2011 site inspection. Such operations included recent excavation and grading of slopes, ongoing stockpiling of processed aggregate materials and recent construction of water collection and drainage facilities. It was also confirmed that recent drainage facility construction at the site has resulted in discharge of sediment to both an un-named seasonal watercourse and to Weber Creek. The seasonal watercourse is located immediately south of the Big Cut Mine property and is directly tributary to Weber Creek. A Notice of Violation was issued by the Executive Officer on May 5, 2011, via certified mail to the Operators/Agents of record. On May 24, 2011, the Notice of Violation sent to the Hardestys was returned unclaimed to the SMGB office. At the SMGB's June 9, 2011, regular business meeting, the Notice of Violation was hand delivered to Mr. Daniel Tankersley who was present on behalf of the Big Cut Mine owners/operators. On June 10, 2011, the Notice of Violation sent to Rick Churches was returned unclaimed to the SMGB office.



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At its September 8, 2011, regular business meeting, the SMGB determined to issue an Order to Comply (OTC) requiring specific actions to be taken not later than October 10, 2011. On September 13, 2011, letters were transmitted to Joe and Yvette Hardesty and Rick Churches via regular and certified mail enclosing the subject OTC. The certified letters were returned as unclaimed to the SMGB office on October 3, 2011, and on October 24, 2011, respectively.

At the time this report was prepared, the Big Cut Mine site remains out of compliance with SMARA. The SMGB is considering upholding its Order to Comply.

STATUTORY AND REGULATORY AUTHORITY: SMARA requires that prior to conducting surface mining operations one must obtain from the appropriate lead agency, in this case the SMGB, an approved Reclamation Plan and an adequate Financial Assurance (PRC Section 2770(a)). In addition, all applicable permits must be obtained from the local jurisdiction, in this case the County of El Dorado, prior to commencing operations (PRC Section 2770(a)).

Surface mining operations pursuant to SMARA, PRC Article 2, Section 2735, are defined as

“...all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging or quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- (a) Inplace distillation or retorting or leaching*
- (b) The production and disposal of mining waste*
- (c) Prospecting and exploratory activities”*

PRC Article 5, Section 2770(a) states:

“Except as provided in this section, no person shall conduct surface mining operations unless a permit is obtained from, a reclamation plan has been submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation pursuant to this article.”

In addition, drainage facility construction activities observed at the Big Cut Mine property on April 29, 2011, are in violation of the SMGB Reclamation Regulations (California Code of Regulations (CCR) Section 3700 et seq.).

CCR Section 3706 (a) states, in part, that surface mining and reclamation activities “*shall be conducted to protect on-site and downstream beneficial uses of water in accordance with the Porter-Cologne Water Quality Control Act, Water Code Section 13000, et seq., and the Federal Clean Water Act, 33 U.S.C. sections 1251, et seq.*”



CCR Section 3706(c) states that “... *sedimentation shall be controlled during all phases of construction, operation, reclamation, and closure of a surface mining operation to minimize siltation of lakes and watercourses, as required by the Regional Water Quality Control Board or the State Water Resources Control Board.*”

CCR Section 3710(a) states that surface water “... *shall be protected from siltation and pollutants which may diminish water quality as required by the Federal Clean Water Act, sections 301 et seq. (33 U.S.C. section 1311), 404 et seq. (33 U.S.C. section 1344), the Porter Cologne Act, section 13000 et seq., County anti-siltation ordinances, the Regional Water Quality Control Board or the State Water Resources Control Board.*”

BACKGROUND:

Description of Surface Mining Operation: The Big Cut Mine site encompasses 149.75 acres, and is located off Big Cut Road, approximately 1.5 miles south of the town of Placerville, and about 2 miles northwest of Diamond Springs, in El Dorado County, California. The site and vicinity are underlain by meta-sedimentary basement rocks of Paleozoic age (230 to 600 million years before present; mybp), which are overlain by three sedimentary rock formations of Tertiary age (1 to 63 mybp). From oldest to youngest, these Tertiary deposits are auriferous gravels, Valley Springs formation of Oligocene (25 to 36 mybp) to Miocene age (13 to 25 mybp). The two primary deposits of the Valley Springs formation are the rhyolite volcanic rock member, and fluvial gravel deposits. The auriferous gravels were extensively mined during the latter half of the 19th Century. The younger gravel deposits would later be mined to produce road base and surfacing materials (Revised Reclamation Plan for Big Cut Mine dated July 11, 2008). In summary, historically, predecessors mined both gold and aggregate from the site and vicinity. The Big Cut Mine site is situated on a south-facing slope, and characterized by two distinct east-west oriented benches.

Chronology of Pertinent Events and Actions: A chronology of pertinent events and actions pertaining to recent activities is as follows:

March 10, 2011

SMGB issued Order Imposing Administrative Penalty in the amount of \$100,000.00 to Big Cut Mine owners/operators for failure to obtain required permits, failure to provide a remediation plan to correct effects of illegal mining and for failure to provide an adequate financial assurance cost estimate.



April 11, 2011	SMGB receives Petition/Notice of Defense requesting review of SMGB's March 10, 2011 Order Imposing Administrative Penalty.
April 27, 2011	SMGB staff informed by CDFG staff that apparent surface mining operations at subject property had resulted in off-site discharge of sediment to Weber Creek.
April 29, 2011	Ongoing and expanded surface mining operations confirmed to be occurring at the Big Cut Mine site based on observations made by SMGB staff during site inspection with CDFG staff.
May 5, 2011	Notice of Violation issued to Big Cut Mine owners/operators for ongoing and expanded operation of an illegal surface mine.
June 9, 2011	May 5, 2011 Notice of Violation re-issued via hand delivery to Dan Tankersley at SMGB regular business meeting.
September 8, 2011	Order to Comply to Commence Corrective Actions issued to Big Cut Mine owners/operators.

Compliance Status: As noted above, on April 27, 2011, SMGB staff was informed by CDFG staff that activities at the Big Cut property had resulted in off-site discharge of sediment to Weber Creek. During a site inspection with CDFG staff on April 29, 2011, SMGB staff confirmed that ongoing and expanded surface mining operations were occurring, and that such activities had resulted in off-sited discharge of sediment to local watercourses. The following photographs illustrate site conditions as observed during the April 29, 2011, site inspection:



Photograph No. 1. Ongoing excavations, heavy equipment and processing plant (viewing southwest).



Photograph Nos. 2 and 3. Surface water and grading in area of recently installed drainage facility installation.



Photograph Nos. 4 and 5. Fine sediment deposition in unnamed watercourse just south of Big Cut Mine.

Subsequently, on May 5, 2011, the Executive Officer elected to issue a Notice of Violation (NOV) to the owners/operators of the Big Cut Mine. Because no record of receipt of this NOV was received, it was re-issued via hand delivery to an agent of the Big Cut Mine on June 9, 2011. The NOV directed the operator to immediately cease any and all mining activities, and to provide within 30 days of receipt of the NOV the following items to the SMGB:

1. A Remediation Plan to correct the effects of illegal mining activities on the Big Cut Mine site. Such plan should address all areas disturbed by illegal surface mining operations on the Big Cut Mine property during the past year, and shall include specific measures for restoring off-site watercourses impacted by recent sediment discharges.
2. A Financial Assurance Cost Estimate that substantially complies with SMARA and Title 14, California Code of Regulations, Section 3804. (A copy of the SMGB's *Financial Assurance Guidelines* is available on our website to assist you in preparing the cost estimate.) Such Financial Assurance Cost Estimate must be of a sufficient amount to cover all

costs associated with reclaiming areas currently disturbed by surface mining activities at the Big Cut Mine site, and shall include costs for restoring off-site watercourses impacted by recent sediment discharges.

3. Copies of all permits as deemed required by each respective jurisdiction in order to bring the Big Cut Mine site into compliance with all local, state and federal requirements. If such permits are not available within the above timeframe, then copies of permit applications or other written correspondence establishing that such permits are actively being sought may be acceptable.

To date, the requirements of the May 5, 2011 and June 10, 2011, Notice of Violation have not been addressed. Further, the requirements of the Order to Comply issued by the SMGB on September 8, 2011, have not been addressed.

CONSIDERATION BEFORE THE SMGB: Pursuant to PRC Section 2774.1(b), the SMGB shall conduct a public hearing to determine, based on the record before it, if the evidence before the SMGB substantially supported the basis for the Order to Comply at the time the Order was issued. Two options are before the SMGB.

If the SMGB finds that the evidence in the record supports the issuance of the order, the SMGB shall uphold the order and any effective date contained in the Order. If no effective date is contained in the order, then the Board shall set a date upon which the Order takes effect.

Or,

If the SMGB finds that the evidence in the record does not substantially support the order, then the SMGB shall not uphold the order.

EXECUTIVE OFFICER'S RECOMMENDATION: As of the date of the preparation of this Executive Officer's Report, the SMGB, while serving as the SMARA lead agency for the Big Cut Mine site, has not received a remediation plan or an adequate financial assurance cost estimate, and no pertinent permits have been provided. In addition, at the time this report was prepared the expanded disturbance caused by ongoing unpermitted surface mining activities has not been remedied or reclaimed, and to the best of our knowledge surface mining operations continue to occur. The Executive Officer recommends that the SMGB uphold the Order to Comply requiring the operator to immediately cease surface mining operations and to commence corrective actions to bring the Big Cut Mine site into compliance with SMARA, and to set an effective date of September 8, 2011, as listed in the Order to Comply. Failure to comply with the requirements of the Order may subject the owner/operator to Administrative Penalties in an amount up to \$5,000 per day per violation.



SUGGESTED MOTION LANGUAGE:

Motion No. 1 - To Uphold the Order to Comply:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the SMGB uphold the September 8, 2011, Order to Comply issued to Joseph and Yvette Hardesty and Rick Churches, owners/operators of the Big Cut Mine (CA Mine ID #91-09-00XX), with an effective date of September 8, 2011.

Motion No. 2 - To schedule a public hearing for consideration of administrative penalties:

Mr. Chairman, in light of the information before the State Mining and Geology Board today, I move that the SMGB, should corrective actions not be commenced to bring the Big Cut Mine site into compliance with SMARA by December 31, 2011, direct the Executive Officer to schedule a public hearing for consideration of administrative penalties at the Board's regular business meeting to be held on January 12, 2012.

Respectfully submitted:



Stephen M. Testa
Executive Officer

EXHIBIT A: September 8, 2011, Order to Comply

